

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 494 of 1992

with

SP. CIVIL APPLICATIONS No 495, 569 & 595 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAJMUDAR HARESHKUMAR HASMUKHBHAI

Versus

PRINCIPAL CHIEF CONSERVATOR OF FORESTS

Appearance:

In Sp. Civil Applications No 494, 495 & 569 of 1992

MR JP PARMAR for Petitioner

MR DA BHAMBHANIA for Respondents

In Special Civil Application No 595 of 1992

MR SK JHAVERI for Petitioner

MR DA BHAMBHANIA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/11/97

C.A.V. JUDGEMENT

1. As in all these four matters, common questions of facts and law have arisen, the same are being taken up for hearing together and are being disposed of by this common order.

2. Shri S.K. Jhaveri, counsel who appeared in one of the cases for the petitioner therein has made leading arguments in the matter.

SPECIAL CIVIL APPLICATION No 494 of 1992

3. The petitioner was appointed on 14-12-1972 as Clerk in the Forest office at Junagadh. He was promoted to the post of Accountant in the same department on 30th September, 1982. Vide advertisement dated February, 1991, the applications were invited to make the appointment on the post of Legal Superintendent. The petitioner applied in response to the said advertisement and thereafter he was given the appointment purely on temporary and adhoc basis and for a period of eleven months vide order dated 27th February, 1991, annexure 'D' to this petition. Before expiry of the period of eleven months for which the appointment has been given to the petitioner, he filed this special civil application on 23rd January, 1992 and prayer has been made for the direction to the respondents to appoint him to the post of Legal Superintendent on permanent and regular basis from 27th February, 1991.

4. This petition has come up for admission before this Court on 24th January, 1992 on which date notice was ordered to be issued to the respondents and interim relief in the following terms has been granted.

"Adinterim relief against the termination of service of the petitioner except as and when the candidate selected by G.P.S.C. is available. On such a candidate being available, respondents would be at liberty to terminate the services of the petitioner."

Thereafter, the matter has come up before this Court on 12th February 1992 on which date rule was issued and by way of interim relief it was directed that the petitioners in all these special civil applications shall be continued in service and the operation of the termination order was stayed and suspended. However, it was made clear that it would be open to the respondents to terminate the services of the petitioners as and when the regularly selected G.P.S.C. candidates are made available.

SPECIAL CIVIL APPLICATION No 495 of 1992

5. The petitioner was appointed as Clerk in the Forest Department of the Government of Gujarat on 18-3-1976. In response to the advertisement dated 17-1-1991, the petitioner submitted an application for appointment to the post of Legal Superintendent and under the order dated 22-2-1991, he was given the temporary and adhoc appointment for eleven months on the aforesaid post. Before the expiry of the period of the term of appointment aforesaid, the petitioner has approached to this Court and orders identical to the orders made in the earlier petition has been passed in this case also by this Court.

SPECIAL CIVIL APPLICATION No 569 of 1992

6. The petitioner in this case was given the appointment on the post of Legal Superintendent under the order dated 22nd February, 1991. This appointment was given only on temporary and adhoc basis for eleven months and the said appointment was came to be terminated on 24th January, 1992. Hence, this special civil application before this Court. In this case also, the interim relief has been granted in favour of the petitioner.

SPECIAL CIVIL APPLICATION No 595 of 1992

7. The petitioner like others has been given the purely temporary and adhoc appointment for eleven months on the post of Legal Superintendent under the order dated 25th February, 1991 in response to the advertisement dated 26th January, 1991. The petitioner also having the apprehension of termination of his services, filed this special civil application before this Court and like the matters aforesaid, he has been granted the interim relief. The petitioner made a grievance that that order has been violated by the respondent by filing civil application No.6739/97 and prayer has been made for punishing the respondents for committing the contempt of Court's order. This civil application has come up for consideration before this Court on 23rd July, 1997 and same has not been granted.

8. Few more facts are required to be given relating to special civil application No.569/95. When the selections were to be made on the post of Legal Superintendent by G.P.S.C., the petitioner was not considered eligible for selection by the G.P.S.C.. She

filed special civil application before this Court and prayer has been made therein for regularisation of her services. On 15th October, 1996, this Court passed the interim direction to the G.P.S.C. to interview the petitioner. In furtherance of the order of this Court aforesaid, the petitioner was interviewed. After the interview was over, the writ petition as well as L.P.A. filed by the petitioner were dismissed and it has been held by this Court that she was not eligible for appointment to the said post in accordance with the Legal Superintendent (Junior Duty), Class-II, Recruitment Rules, 1995. The matter has been taken up by the petitioner to the Hon'ble Supreme Court by filing S.L.P. (C) Nos.4017-18 of 1997 and after grant of leave, registered as C.A. Nos.1755-56/97. Those appeals came to be decided by the Hon'ble Supreme Court under the order dated 3-3-1997. This Court has dismissed the petition and L.P.A. of the petitioner on the ground that she did not had the requisite experience as prescribed under the Rules, 1995 of conducting civil and criminal cases and therefore the directions to regularise her services cannot be issued. Their Lordships of the Hon'ble Supreme court without going into interpretation of Rule 3 (c) of the Rules, 1995 disposed of the C.A. with the direction that in the event of the appellant, the petitioner herein, selected in the interview and recommended for appointment by the G.P.S.C. her case may be considered for appointment in accordance with the rules without having any effect of Rule 3(c) of the Rules. The Court has further ordered that the appellant therein be continued in service till the Public Service Commission finalises the selection list. It has further been ordered that in the event of any recommendation other than the appellant is made by the G.P.S.C. for appointment, then necessarily on making the appointment, the appellant shall be relieved from the post until then she would continue. It is not in dispute that the petitioner herein, Ms. Nita Bhatt was not selected for the post of Legal Superintendent by the G.P.S.C..

9. The learned counsel for the petitioner, Shri S.K. Jhaveri in special civil application No.595/92 contended that the appointment of the petitioner on the post of Legal Superintendent has been made after selection. It was not a case of back door entry. The appointment has been made as per the rules then prevalent and the post of Legal Superintendent was not a post in the purview of the G.P.S.C.. The department was only to make the appointment after selection and the appointment has been made after selection, and as such, the petitioner's services are to be taken a regular services and there is

no question of terminating his services. Rules, 1995 will not come in the way of the petitioner.

10. Shri J.P. Parmar, learned counsel who appeared for the petitioners in other three petitions contended that one of the petitioner therein Smt. Nita Bhatt had challenged the validity of the Legal Superintendent (Junior Duty), Class-II, Recruitment Rules, 1995 before this Court by filing a separate petition and that petition is pending, and as such, these matters may not be heard till that special civil application is decided. It has next been contended that the services of the petitioner, Smt. Nita Bhatt cannot be terminated till the candidate selected by the G.P.S.C. is given the appointment. Otherwise the termination of her services would be contempt of the order passed by the Hon'ble Supreme Court in her C.A. on 3-3-1997.

11. Shri D.A. Bhambhaniya, learned counsel for the respondents, with all vehemence at his command contended that the petitioners have no case whatsoever in their favour. The appointments of the petitioners were subject to the specific condition that they are appointed purely on temporary and adhoc basis. These appointments of the petitioners were not only temporary and adhoc but were for a fixed term of eleven months and further there was a specific condition that it will continue till eleven months or till the regularly selected candidates by the G.P.S.C. are made available, whichever is earlier. These conditional appointments have been accepted by the petitioners and when those were temporary appointments or adhoc appointments and more so for a fixed term, their services are liable to be terminated. Otherwise their services would have come to an end by efflux of time but they are continuing only because this Court has protected them. Even in such cases, the order of termination is not required to be passed.

12. Giving reply to the contention of the learned counsel Shri S.K. Jhaveri that the appointments has been made under Rules, 1966, the counsel for the respondents contended that the appointments have not been made under the Rules, 1966 but these appointments have been made only on temporary and adhoc basis. Even the temporary appointments are to be made after following the provisions of the Constitution under Articles 14 and 16 and accordingly, the appointments have been made after selection but these are not the regular and substantive appointments. The permanent appointments have to be made only through G.P.S.C. The petitioners have no right whatsoever to continue on the posts beyond eleven months

or in all the eventualities after the candidates selected by the G.P.S.C. are made available. Lastly, it has been contended that the G.P.S.C. has already made the appointments to the posts of Legal Superintendent and the selected candidates are made available and as the petitioners' are continuing in service on the basis of interim order granted by this Court, the selected candidates could not be given the appointments so far. Carrying this contention further the counsel for the respondents contended that while granting the interim relief to the petitioners, this Court has made it clear that their services are liable to be terminated on availability of the selected candidates and similarly, the Hon'ble Supreme Court has also taken care of this situation and has protected one of the petitioners till the regularly selected candidate is given the appointment. In view of this fact, the petitioners have to make a room for the selected candidates.

13. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

14. The appointments of the petitioners in all these four cases on the post of Legal Superintendent was given purely on temporary and adhoc basis and for a fixed term with a specific condition that the same is liable to be terminated even earlier to that period on the availability of selected candidates by the G.P.S.C.. Rules have been framed in the year 1995 but the post of Legal Superintendent was to be filled in earlier also through G.P.S.C. otherwise it was not necessary on the part of the respondent to mention this fact in the appointment order itself. I do not consider it to be necessary to go into the wider issue raised by Shri S.K. Jhaveri, the learned counsel for the one of the petitioners, that the Rule, 1966 do not make any provision for selection on this post by G.P.S.C. and those rules have not been superseded under Rules, 1995. It is suffice to say that the appointments of the petitioners were conditional and it has come to an end automatically on expiry of the term of appointment or on availability of the selected candidates by the G.P.S.C.. This conditional appointment has been accepted by the petitioners and they are bound by the terms thereof. It is different matter that the petitioners have approached to this Court and this Court has protected the petitioners by grant of interim relief. From reading of the order which has been made by this Court in these matters one thing is clear that by that time the respondents have not taken any process for selection on this post and that is the reason this Court would have

though it proper to continue these persons on adhoc and temporary basis till the regular selected candidates are made available by G.P.S.C.. This arrangement was continued so that the respondents may not substitute these temporary appointees by another set of temporary appointees. The object would have been to see that these persons may only be replaced by the regularly selected candidates by G.P.S.C. and not otherwise. It is not in dispute that in later point of time, the applications were invited by G.P.S.C. for appointments to be made on the post of Legal Superintendent. It is not the case of the petitioners other than one petitioner, Smt. Nita Bhatt, that they have applied for the post of Legal Superintendent. On specific question put by the Court to the counsel for the petitioners in three matters, he is unable to give any reply whether these three persons have applied for the post to the G.P.S.C. or not. The learned counsel for the petitioners does not dispute the fact that the selected candidates by the G.P.S.C. are available for the posts. So the condition on which the temporary appointments have been given to the petitioners is fulfilled and the petitioners have to make a room for the selected candidates. Otherwise also, the interim relief which has been granted by this Court was a conditional one and on the condition being fulfilled that appointment automatically comes to an end.

15. The temporary appointees, by continuing on the post even for a longer period, do not acquire any right to the posts. In the present case, the appointments were given only for eleven months to the petitioners and by efflux of time they have come to an end but for all these years, the petitioners are working on the posts on the basis of interim relief granted by this court. In the matter of fixed term appointment even the order of termination of services is not required to be passed nor any notice is required to be given as it comes to an end automatically by efflux of time. Reference in this respect may have to the decision of this Court in the case of Bhanmati Tapubhai Muliya vs. State of Gujarat reported in 1995 (2) GLH 228. In this very case, the Division Bench of this Court has referred two decisions of the Hon'ble Supreme court in the case of State of Gujarat & Anr. vs. P.J. Kampavat reported in 1993 (1) GLR 848 and in the case of Dr. Arundhatti Ajit Pargaonkar vs. State of Maharashtra reported in JT 1994 (5) SC 378 where the temporary appointments have been given and on the basis of their very long working the prayer has been made for regularisation of their services but that was not accepted. In the present case, the post of Legal Superintendent was to be filled in by selection

through G.P.S.C. by the department and the intention of the department has been made clear by the department in the appointment letters which have been given to the petitioners. Even if it is presumed and assumed for the time being that under the Rules, 1966, the posts of Legal Superintendents were not required to be filled in by G.P.S.C. but still I have my own reservation if the Department and the State Government decided to fill up these posts by G.P.S.C. whether any exception could have been taken to this course by the petitioners or by this Court. However, I have gone through the Rules, 1966 and I do not find anything from those Rules where it excludes the recruitment to the posts of Legal Superintendents through G.P.S.C.. The claim of the petitioners for regularisation of their services as Legal Superintendent otherwise also does not stand on any ground. The petitioners have no right to the post and it is different matter that as the respondents have delayed the selection to be made on these posts by G.P.S.C. they are continuing for all these years. But now as the selected candidates are made available they cannot be permitted to continue on the posts. None of their legal and fundamental rights are being infringed.

16. So far as the case of Smt. Nita Bhatt is concerned, it is true that the Hon'ble Supreme Court in the order dated 4-3-1997 has ordered that the petitioner may be continued in service till the appointment of the selected candidate is made. As per the case of the respondents, the selected candidates are made available and for all the time the appointments to these candidates could not be give as the petitioners were protected by this Court. However, the orders of this Court are very clear and specific and on the availability of the selected candidates the respondents have all the power to terminate their services. On merits when the petitioners have no case whatsoever then how far they are justified to say that till the actual appointments are made they should be continued in the service. The petitioners have no legal right to continue on the posts.

17. In the result, all these special civil applications fail and the same are dismissed. Rule discharged. However, it is made clear that in the case of Smt. Nita Bhatt, the respondents should take the care of the order of the Hon'ble Supreme Court given in C.A. No.1755-56/97 and she should be relieved from the post only on making the appointment of the selected candidate. Rule in Special Civil Application No.569/95 is discharged subject to the aforesaid observation. Interim relief granted by this Court stands vacated.

zgs/-